

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of AALIYAH MARIE PAYNE,
Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

DANNY COX,

Respondent-Appellant,

and

ANGEL MARIE PAYNE,

Respondent.

UNPUBLISHED

July 24, 2008

No. 282652

Macomb Circuit Court

Family Division

LC No. 2006-000600-NA

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Respondent Danny Cox appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(a)(ii), (c)(i), and (g). For the reasons set forth in this opinion, we affirm.

At the pretrial hearing in this case, the mother of the minor child pleaded no contest to certain allegations in the petition against her, while respondent, though not present, requested through counsel that the court schedule a separate date to independently adjudicate the allegations against him. The trial court assumed jurisdiction over the child pursuant to the mother's plea, relying on the holding in *In re CR*, 250 Mich App 185; 646 NW2d 506 (2002) that it need not adjudicate with regard to all parents to assume jurisdiction over the child and enter dispositional orders. It was not clear whether respondent received proper notice of the pretrial hearing, so the trial court entered a provisional dispositional order for him and continued his pretrial to a later date. Respondent did not attend his continued pretrial, and the trial court ordered him to comply with a parent agency agreement. During the next eight months, respondent did not participate in any services or appear at any hearings except the termination hearing. The trial court conducted respondent's adjudication trial in conjunction with the termination hearing, first finding that a preponderance of the evidence warranted jurisdiction

with regard to him and then that clear and convincing evidence warranted termination of his parental rights.

The crux of respondent's appeal is that the adjudication trial he received violated due process in that it was fundamentally unfair because it was not held at the outset of the proceeding, as requested, but 12 months later in conjunction with the termination hearing. Respondent argues that the trial court erred in relying on an improper application of *In re CR*, *supra*, in disregarding his request for an immediate independent adjudication trial, which deprived him of witnesses whose memories were fresh and subjected him to compliance with court-ordered services for 12 months that were never shown to be necessary and with which failure to comply was used as a basis for terminating his parental rights. Respondent did not raise the issue of violation of his right to a fair adjudication trial in the trial court, and our review of this constitutional claim is based on plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

We find no plain error here. Although the normal progression in a child protective proceeding is to move from petition, to adjudication, to disposition, and then to reunification or termination, it is well established that a petitioner need not file a petition and prove separate allegations by a preponderance of the evidence with regard to every parent of the subject children before the trial court's assumption of jurisdiction over the children and entry of dispositional orders. *In re CR*, *supra* at 205.¹ Once jurisdiction over a child is assumed, the trial court may order an adult's compliance with a parent agency agreement and other services, as deemed in the child's best interest. *Id.* at 202. This Court noted in *In re CR* that it is possible "under the proper circumstances" to terminate the parental rights of a parent who has not participated in the child protective proceeding, citing as an example a parent who had deserted his child under the provisions of MCL 712A.19b(3)(a). *Id.* at 205 n 44. Respondent argues that those "proper circumstances" were not present in his case because he requested a trial, but the facts showed he did not make himself available for adjudication, which was a circumstance contemplated in *In re CR*.

Since the termination hearing was the first occasion on which respondent made himself available for adjudication, the trial court did not err in conducting his adjudication trial in conjunction with the termination hearing. No procedural error occurred; therefore, it is not necessary to address whether respondent's substantial right to a trial was affected. Respondent's right to a proper adjudication trial was preserved by the procedure used by the trial court.

¹ Respondent asserts that this Court rejected the notion that one parent's plea may deprive the other parent of a requested jury trial in *In re Bechard*, 211 Mich App 155; 535 NW2d 220 (1995). However, in *Bechard* the Court held that the mother's plea to a petition that held no allegations against her did not establish the trial court's jurisdiction over claims in the petition against the father. *Id.* at 160-161. The petition in the present case contained claims against both respondent and the child's mother, and jurisdiction was based on her plea to the allegations against her and not to allegations against respondent.

Affirmed.

/s/ Henry William Saad

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello